BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Continued Costing and	)	
Pricing of Unbundled Network Elements,	)	**Docket No. UT-003013**
Transport, Termination, and Resale	)	**Phase B**

VERIZON NORTHWEST INC. MOTION FOR RECONSIDERATION AND CLARIFICATION OF PORTIONS OF THE 32ND SUPPLEMENTAL ORDER

Verizon Northwest Inc., ("Verizon NW"), by counsel, respectfully moves the Commission for reconsideration and clarification of certain aspects of its 32nd Supplemental Order (the "Part B Order" or "Order").

I. Introduction

Verizon NW seeks reconsideration of the Commission's decisions regarding DSL and packet switching in light of the decision of the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") in *United States Telecom Association v. FCC,*[1] remanding the FCC's *UNE Remand Order* and vacating and remanding the FCC's *Line Sharing Order*. As discussed below, the D.C. Circuit remanded the FCC's unbundling rules and vacated the FCC's line sharing rules, and the Commission must modify its decision to reflect the court's rulings.

Verizon NW also seeks reconsideration of certain modifications to its proposed costs. First, the Commission's modifications to Verizon NW's loop conditioning costs are not based on consideration of the evidence supporting those costs, but are instead based on an incorrect presumption that Verizon NW's burden is to prove why its costs are different from those of Qwest. Under the Act, Verizon NW's UNE rates must reflect its own costs, not those of another ILEC. Second, the Commission's modifications to Verizon NW's non-recurring costs suggest a misunderstanding of the differences in Verizon NW's ordering processes for different UNEs.

[1] Case No. 00-1012 (and consolidated cases), 290 F.3d 415 (D.C.Cir. 2002).

Third, the Commission's establishment of non-recurring charges for conversion of special access or private line circuits to unbundled loops incorrectly assumes that Verizon NW makes such conversions. However, Verizon NW only converts special access on private line circuits to EELs. Fourth, the Commission's modifications to Verizon NW's recurring cost model suggest a misunderstanding of the basic structure, inputs, and outputs of the model. Moreover, to the extent that the changes can be implemented at all, the Commission-ordered modifications will lead to estimates that fail to reflect Verizon NW's operating practices and service territory characteristics.

Verizon NW seeks reconsideration and clarification of certain instructions outlined in the Part B Order for Part E of this proceeding. Specifically, Verizon NW requests clarification that it may use actual data rather than time and motion studies in future non-recurring cost studies. Further, Verizon NW requests that consideration of a permanent common cost factor be deferred to UT-023003.

Verizon NW seeks reconsideration of the test the Commission adopts for use in determining whether a CLEC is eligible to receive the tandem rate pursuant to 47 C.F.R. § 51.711. The Commission states in the Part B Order that a CLEC will be eligible to receive the tandem rate even if the CLEC fails the geographic area test, so long as the CLEC can satisfy a functional equivalency test. This position is contrary to Ninth Circuit and FCC precedent and the applicable rule, all of which make clear that a CLEC must pass the geographic area test to be eligible for the tandem rate.

Finally, Verizon NW seeks clarification of certain Commission statements made in the reciprocal compensation section of the Part B Order that appear to paraphrase assertions by the Joint CLECs regarding the circumstances and effects of Verizon NW's compliance with the rate

offering and "mirroring" requirement of the FCC's *Order on Remand*. There is no merit to the Joint CLECs' assertions. Verizon NW therefore requests that the Commission make absolutely clear that these parts of its Order simply repeat arguments made by the Joint CLECs.

II. The Commission's Legal Conclusions Regarding DSL Issues Do Not Adequately Reflect The D.C. Circuit's Opinion In *United States Telecom Association v. FCC.*

On May 24, 2002, the D.C. Circuit issued its opinion in *United States Telecom Association v. FCC*, remanding the *UNE Remand Order,*[2] and vacating and remanding the *Line Sharing Order*[3] because those orders were inconsistent with the Telecommunications Act of 1996 (the "Act"). The D.C. Circuit found the FCC's rules in the *UNE Remand Order* overly broad because they require national unbundling without consideration of the different levels of competition or impairments in different geographic markets, including the impact of regulatory pricing and cross-subsidization within ILEC services. *Unites States Telecom Assoc. v. FCC* at 422-428. With respect to the *UNE Remand Order*, the Court rejected the FCC's unbundling test as "broad and unrooted in any analysis of the competing values at stake in implementation of the Act." *Id*. at 428. Of particular relevance to this proceeding, the Court specifically rejected the FCC's unbundling of packet switching. *Id*.

In vacating the *Line Sharing Order*, the Court agreed, as Verizon has steadfastly advocated, that

> the [FCC], in ordering unbundling of the high frequency spectrum of copper loop so as to enable CLECs to provide DSL services, completely failed to consider the relevance of competition in broadband services coming from cable (and to a lesser extent satellite).

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[2] *In the Matter of Implantation of the Local Competition Provisions of the Telecommunications Act of 1996* CC Docket No. 96-98, 15 FCC Rcd. 3696 (1999).

[3] *Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 14 FCC Rcd 20,912 (1999).

Id. The D.C. Circuit found unreasonable the FCC's interpretation of § 251(d)(2)(B)'s instruction that it consider whether "failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services *that it seeks to offer*" to require consideration only of services provided over an ILEC's network:

> As Justice Breyer's separate opinion [in *Iowa Utilities Board v. FCC*] carefully explained, mandatory unbundling comes at a cost, including disincentives to research and development by both ILECs and CLECs and the tangled management inherent in shared use of a common resource. And, as we said before, the Court's opinion in *Iowa Utilities Board*, though less explicit than Justice Breyer on the need for balance, plainly recognized that unbundling is not an unqualified good--thus its observation that the Commission must "apply *some* limiting standard, rationally related to the goals of the Act," and its point that the Commission "cannot, consistent with the statute, blind itself to the availability of elements outside the incumbent's network." In sum, nothing in the Act appears a license to the Commission to inflict on the economy the sort of costs noted by Justice Breyer under conditions where it had no reason to think doing so would bring on a significant enhancement of competition. The Commission's naked disregard of the competitive context risks exactly that result.

Id. at 429 (citations omitted, italics in original).

The Part B Order, issued nearly a month after *United States Telecom Association v. FCC*, does not reflect the analysis and ruling of the D.C. Circuit. Given this, the Commission's decision to defer the issues of line splitting, line sharing over fiber-fed loops, and packet switching to another proceeding is prudent. However, the Commission's premature findings with respect to the legal framework surrounding these issues must be reconsidered in light of the D.C. Circuit's opinion.

First, the Commission errs in its reliance on its previous findings that the high frequency portion of the loop ("HFPL") is a UNE to reject Verizon NW's proposal that any nationwide fiber-fed DLC wholesale product that it may offer in the future should be priced at market rates.

See Part B Order ¶ 42. Part A and Part B of this proceeding were established, in part, to implement the FCC's line sharing rules. Indeed, the Commission's previous finding that the HFPL is a UNE was merely an acknowledgement that the FCC's *Line Sharing Order* had unbundled the HFPL. *See* 13th Supplemental Order ¶ 24. The FCC's rules have now been vacated and remanded to the FCC as inconsistent with the Act. Accordingly, the basis for the Commission's finding that the HFPL is a UNE no longer exists, and there is no other basis considered or analyzed in any Commission order. The Commission should not make any declarations at this time regarding the appropriate pricing methodology for a wholesale service that does not yet exist.[4]

Similarly, the Commission errs in suggesting that it has the authority to establish TELRIC rates for unbundled packet switching. *See* Part B Order ¶¶ 434-435. The Commission lacks authority to do so without the federal unbundling rules—as well as a record—to impose its own rules on Verizon NW and Qwest. The Act requires the FCC to determine ILEC unbundling obligations in the first instance, and state commissions are not free to mandate unbundling beyond that ordered by the FCC. The availability of UNEs must be limited to those instances where CLECs cannot enter the local market without them. State action making UNEs more broadly available would frustrate achievement of the Act's core goal of promoting facilities-based competition. Moreover, as the FCC has emphasized, its "policy and regulatory framework" should "foster investment and innovation . . . by limiting regulatory uncertainty and

[4] Verizon NW urges the Commission to await a decision by the FCC on the issue of line sharing over fiber. The FCC's promulgation of new rules in light of the D.C. Circuit decision will take place in the context of its Triennial Review. *See* Statement of FCC Chairman Michael Powell on the Decision by the Court of Appeals for the District of Columbia Circuit regarding the Commission's Unbundling Rules (FCC press release dated May 24, 2002).

unnecessary or unduly burdensome regulatory costs." Broadband NPRM[5] ¶ 5. A second tier of state unbundling regulation cannot be reconciled with these critical objectives.

Section 251(d)(2) is the beginning and end of the inquiry as to the states' authority to add or retain UNEs: "[i]n determining what network elements should be made available … *the [FCC] shall*" engage in the impairment analysis. 47 U.S.C. § 251(d)(2) (emphasis added). This is not merely an advisory role. In contrast to other parts of §§ 251 and 252,[6] in which Congress gave the states a role in implementing the Act, Congress conferred upon the FCC the authority to determine what elements must be unbundled. The states cannot "reverse preempt" the FCC's determinations by considering access to unbundled elements when the FCC has considered access to the same elements. Any state action to consider independently issues addressed by the FCC would ignore the Supreme Court's mandate that the FCC impose "limits" on access to UNEs. A federal limit that can be superseded by the states is no limit at all.

Section 251(d)(3) of the Act reinforces this analysis. That provision restricts the states' authority by prohibiting them from establishing access and interconnection regulations unless such regulations would be "consistent with the requirements of [§ 251]" and would not "substantially prevent implementation of [§ 251] and the purposes of this part." 47 U.S.C. § 251(d)(3). Where the FCC has acted, any state unbundling mandate is inherently inconsistent with § 251. As an initial matter, this is true because the FCC has sole authority to determine what elements are to be unbundled. Moreover, even if the FCC's authority was not exclusive, if it has made a non-impairment finding with respect to a particular UNE (or has found impairment

[5] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, FCC 02-42 (rel. Feb. 15, 2002) ("Broadband NPRM").

[6] *See* 47 U.S.C. §§ 251(f) (states determine whether ILEC's rural exemption should be terminated), 252(b) (states arbitrate interconnection agreements), 252(d) (states determine rates for interconnection, UNEs).

but has declined to mandate unbundling under the Act due to other considerations), then any state action to mandate access to that UNE would likewise be inconsistent with § 251. Similarly, when the FCC has mandated unbundling but that decision has been found to be flawed, as is the situation that now exists with respect to the FCC's line sharing and packet switching rules, any similar state action also would be inconsistent with § 251.

Even if the Commission could order unbundling above and beyond that mandated by the FCC—which it cannot—its unbundling authority would be limited to the impairment standard mandated by § 251(d)(2) of the Act and defined by FCC rules. The current federal framework governing unbundling—including the FCC's articulated impairment standard—has been rejected by the D.C. Circuit's decision in *United States Telecom Association v. FCC* as inconsistent with the Act. Should the D.C. Circuit's decision stand—as Verizon NW expects it will—there will be no new impairment standard for this Commission to apply until the FCC issues new unbundling rules in accordance with the requirements of the D.C. Circuit's decision. Accordingly, the Commission's statements in the Part B Order regarding unbundling packet switching are premature and the subject should not be addressed until new FCC unbundling rules are in place.

III. Verizon's NW Loop Conditioning Costs Should Not Be Based On Qwest's Work Time Estimates.

Despite the detailed evidence provided by Verizon NW of the work activities reflected in its loop conditioning work time estimates, the Commission ordered Verizon NW to recalculate its costs and rates using Qwest's work time estimates adjusted to reflect Verizon NW's longer loop lengths. Part B Order ¶ 59. The Commission rejected Verizon NW's work times solely because Verizon NW did not explain how its engineering activities to remove load coils and bridged taps from its network differ from those on Qwest's network. This, however, is not a

relevant inquiry. The proper inquiry is whether Verizon NW supported its work time estimates with sufficient evidence. It unquestionably did so.

More importantly, the Commission's rationale for rejecting Verizon NW's costs estimates is unreasonable. No party disputed that the activities Verizon NW identified in its cost study were necessary for completing the activities associated with removing load coils and bridged taps. Nor did the Commission identify any specific activities as unnecessary to remove load coils and bridged taps, or reduce individual work-time estimates as being unreasonably high.

Instead, the Commission imposed on Verizon NW a burden of proof inconsistent with the Act. The Act requires that Verizon NW's wholesale rates recover ***its*** costs, not those of another company. *See* 47 U.S.C. § 252(d)(1). Thus, Verizon NW is required to calculate its own costs, not justify why its costs differ from those of another company. Verizon NW's evidence in Part B met its burden of proof, and its loop conditioning costs should be adopted as filed.

IV. Verizon NW's Non-Recurring Cost Studies

A. The Commission Should Permit Verizon NW To File Non-Recurring Costs Based On Actual Data Rather Than Time And Motion Studies.

In paragraph 51 of the Part B Order, the Commission appears to mandate that Verizon NW and Qwest file non-recurring cost studies in future dockets supported by time and motion studies. Verizon NW requests clarification that the Commission does not intend to restrict Verizon NW from using actual data collected through Verizon NW's experience in receiving and processing UNE and resale orders. Time and motion studies are administratively burdensome and expensive to conduct. Verizon NW generally conducts time and motion studies only when it lacks a sufficient sample size of actual data upon which to base costs. Where a sufficient sample size of data exists, however, Verizon NW prefers to use actual data as a basis for its costs. The

Commission should not hinder Verizon NW's ability to use actual observed work times or activities in future dockets. Moreover, a time and motion study would presumably duplicate the actual data Verizon NW already has.

B. The Work Times Required By The Part B Order Are Based On A Study That Does Not Apply To All Service Orders.

In its analysis of Verizon NW's non-recurring costs, the Commission appears to have addressed only costs for those elements that are ordered through an Access Service Request ("ASR") at Verizon NW's National Access Contact Center ("NACC"). As the Commission acknowledges, only dark fiber, EELs, dedicated transport, and SS7 are ordered via an ASR submitted to the NACC. Part B Order ¶262 n.266. All other orders are submitted via a Local Service Request ("LSR") to Verizon NW's National Market Centers. The Commission rejected Verizon NW's work time estimates for ASRs, and required Verizon NW to use the actual work times observed by Arthur Anderson in its study at the NACC. Part B Order ¶277. These work times apply only to orders placed via ASRs, not those placed via LSRs. However, the Commission appears to require Verizon NW to use these work times for elements that are ordered through the LSR process, such as sub-loops and UNE-Ps.

In ordering Verizon NW to adjust its non-recurring costs for sub-loops and UNE-Ps to reflect the actual observed work times to process ASRs, the Commission ignores the fact that ASRs and LSRs are processed by different groups using different processes. Moreover, the Commission fails to address the work time estimates proposed by Verizon NW for elements ordered via the LSR at all.[7] The Commission provides no justification for rejecting Verizon

[7] To determine the costs for sub-loop ordering, Verizon NW relied upon the exchange-basic ordering process as a proxy because the two processes are similar. Verizon NW Opening Brief at ¶ 49. UNE-P ordering costs are contained in Exhibit CR-1160, pages 7-WA 20, 7-WA 21, 7-WA 23 and 7-WA 24. *Id*. ¶ 55.

NW's ordering work time estimates for sub-loops and UNE-P. Consequently, Verizon NW's non-recurring costs for these elements should be adopted as filed.

C. The Commission Should Not Establish Non-Recurring Charges For Conversion Of Special Access Or Private Line Circuits To Unbundled Loops.

Verizon seeks reconsideration of the Commission's order that Verizon NW must charge the same nonrecurring charge for conversions of special access or private line circuits, regardless of whether those circuits are being converted to EELs or unbundled loops. Part B Order ¶324. The Commission assumes that Verizon NW converts special access or private line circuits to unbundled loops. However, Verizon NW only converts special access or private line circuits to EELs. Tr. 2876-2879 (Trimble).

The Commission's decision to establish non-recurring charges for conversions of special access or private line circuits to unbundled loops (as opposed to EELs) presumes such conversions are permitted. However, the FCC considered that question and rejected it in its *Supplemental Order of Clarification* to the *UNE Remand Order*.[8] In that *Clarification,* the FCC affirmed its general prohibition on converting special access to UNEs except in the limited circumstance of conversion to ***EELs*** when the CLEC proves that "a significant amount of local exchange service" is being provided to a particular customer. *Supplemental Order of Clarification* at ¶22 (emphasis added). The FCC constrained carriers' ability to convert special access circuits because it was concerned that carriers that provide exchange access service would be able to arbitrage special access rates and harm universal service. The Commission cannot overrule the service conversion restrictions contained in the *Supplemental Order of Clarification*.

[8] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Supplemental Order Clarification*, 15 F.C.C.R. 9587 (2000).

Thus, the Commission should not require non-recurring charges for conversions of special access or private line circuits to unbundled loops.

V. Verizon NW's Recurring Cost Studies

A. The Adjustments To ICM Required By The Commission Likely Will Not Result In An Average Cost Of A DS-0 Loop Consistent With The Statewide Average Adopted In UT-960369.

The Commission orders several modifications to ICM that change loop cost drivers. Any modifications to cost drivers—be they model inputs or model outputs—will by definition change the resulting costs. The DS-0 loop cost calculated by ICM as filed in Exhibit 1171\C-1171 is within pennies of the loop cost adopted by the Commission in UT-960369.[9] Thus, absent any of the modifications ordered by the Part B Order, ICM calculates a loop cost consistent with the $20.30 statewide average loop cost from the Commission's 17th Supplemental Order in UT-960369.[10] Each change to ICM ordered by the Part B Order modifies significant loop cost drivers, and therefore changes the resulting loop costs. Consequently, each change to ICM ordered by the Commission decreases the likelihood that the model will still be consistent with the statewide average cost adopted in UT-960369.

B. The Commission's Attempt To Force ICM To Develop Specific Outputs Will Result In Inaccurate Estimates Of Verizon NW's Forward Looking Costs.

The Commission orders Verizon NW to modify several outputs developed by ICM that drive loop costs. Specifically, the Commission mandates that ICM produce a particular result for loop lengths, drop lengths, and feeder/distribution ratios. These values are not inputs to ICM, but are outputs of the modeling process that result from inputs concerning customer location,

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[9] It was for this reason that Verizon NW did not re-litigate unbundled loop rates in UT-003013.

[10] Verizon NW seeks clarification that paragraph 361 of the Part B Order intended to refer to the $20.30 statewide average loop cost, not the $23.94 loop rate.

copper loop restrictions, and the geographic and demand characteristics of Verizon NW's network service territories in Washington. Even if it were possible to do so, manipulating ICM to produce results-oriented outputs will result in artificial cost estimates, not Verizon NW's forward-looking costs to serve Washington.

The objective of the Commission should be to estimate the ILEC's forward-looking costs of provisioning telecommunications services out of ***each company's*** own network. Because each company can only provision UNEs out of ***its own*** network, it necessarily follows that the cost estimates relied on by this Commission must reflect forward-looking costs specific to each company's network. ICM is a long-run incremental cost model designed to calculate the forward-looking cost of provisioning telecommunications services and UNEs out of Verizon NW's Washington network. ICM is a bottoms-up, engineering-based model that utilizes economically efficient, forward-looking technology to develop cost estimates for the modern digital network required to provide telephone service in Verizon NW's Washington service areas. ICM does this by designing the network using currently available, forward-looking technology, while reflecting Verizon NW's engineering practices and operating characteristics, and by relying on the prices for labor, material, and equipment that Verizon NW is actually able to obtain in Washington. *See* Verizon NW's Opening Brief at ¶ 63.

In keeping with the FCC's *Local Competition Order*, ICM models a network based on Verizon NW's existing wire center locations that is capable of serving one hundred percent of current demand. ICM designs and determines costs for the forward-looking network as if it were built all at once using all new plant and technology. From this starting point, ICM calculates intermediate outputs that drive the cost of various network elements. Any attempts to predetermine or artificially create these intermediate outputs compromise the accuracy of ICM

cost estimates. The result is not an accurate forward-looking estimate of Verizon NW's costs in Washington, but the hypothetical costs of a hypothetical company to serve a hypothetical service territory.

1. Verizon NW Should Not Be Required To Modify ICM To Reflect 1998 Loop Length Estimates.

Based on Staff's concern over the variance between Verizon NW's actual loop lengths and those modeled by ICM, the Commission ordered Verizon NW to modify ICM to produce loop lengths at the wire center that match data Verizon NW developed in 1998. Part B Order ¶ 347. The Commission did not accept Verizon NW's argument on the forensic quality of loop lengths as an indicator of a model's reasonableness as conflicting with the Verizon NW's goal of building a cost model that reflects actual operating characteristics. Part B Order ¶ 346. The Commission correctly describes Verizon NW's goal. However, the Commission does not adequately consider the fact that any attempt to build a cost model that reflects Verizon NW's actual operating characteristics is constrained by the FCC's TELRIC methodology, which by definition will not reflect precisely Verizon NW's actual existing network or operating characteristics. While required by the FCC's TELRIC rules, ICM's assumption that the network is built all at once with all new plant and technology from the ground up does not reflect Verizon NW's network as it was deployed and has evolved over time. Verizon NW's network, and any real-world network, evolve through time and reflect a mix of technologies, some of which are no longer considered forward-looking. Verizon NW provided numerous other examples in its Reply Brief of how the TELRIC methodology leads to a modeled network that does not match Verizon NW's actual network. *See* Verizon NW Reply Brief at ¶¶ 94, 98, 101. In short, modeled loop lengths should not be expected to equal actual loop lengths because, as Staff recognizes, modeled networks that adhere to TELRIC principles do not replicate the current

network in place. Tr. 3875 (Spinks). As a result, the modeled loop lengths will be either shorter or longer than actual loop lengths. Exhibit T-1174:34 (Collins).

2. Drop Lengths

Because Verizon NW did not conduct a drop length study in this proceeding, the Commission requires Verizon NW to adjust the drop lengths in ICM to match the values adopted in UT-960369. Part B Order ¶353. The Commission's decision assumes that drop lengths are an input into ICM based on subject matter expert opinion. *See* Part B Order ¶¶ 351-353. However, drop lengths produced by ICM are an output of the model, not an input. ICM models drop lengths based on the specific density characteristics of the geographic area in question. As with loop lengths, forcing ICM to produce artificial drop length results will lead to costs that do not reflect Verizon NW's service characteristics. The Commission should adopt the drop lengths calculated by ICM.

3. Feeder/Distribution Ratios

While rejecting the Joint CLECs' proposal to establish feeder and distribution costs based on models not in the record in this proceeding, the Commission adopts Staff's proposal, which is also based on a model not in the record in this proceeding, to adopt a 50/50 feeder/distribution ratio in dense urban areas. Part B Order ¶¶ 414-415. Staff's feeder/distribution ratio is based solely on cost estimates developed with the HM3.1 model. Staff Opening Brief at 27. The Commission should disregard any cost or rate estimates based on the HM3.1 model since it is not in the record of this proceeding and has been rejected for use in any proceeding to establish UNE rates.

Based on the design characteristics of Verizon NW's network, ICM calculates subloop percentages of 30% feeder to 70% distribution. This ratio reflects the feeder and distribution percentages found in Verizon NW's network. *See* Tr. 2671 (Collins). As explained by Mr.

Collins, it is more likely in Verizon NW's network that feeder as opposed to distribution lengths increase as loop lengths increase in more rural areas. Thus, Staff's estimates showing an increase in distribution lengths in more rural areas do not accurately reflect Verizon NW's service territory characteristics. *See* Exhibit T-1174:31-32 (Collins).

C. Structure Sharing

The Part B Order requires Verizon NW to recalculate ICM cost estimates based on the structure sharing ratios previously adopted in UT-960369. In doing so, the Commission rejects structure-sharing assumptions that reflect not only Verizon NW's ***actual*** structure sharing experience, but also match the input structure of the proposed models. Exhibit T-1174:30 (Collins). The density-specific structure sharing ratios required by the Order do not match the ICM input requirements, as ICM does not provide for structure sharing inputs by density zone. In addition to the density zone difference, the use of these values in the algorithms producing network investment differs between the model from which they originated (Hatfield) and ICM. As such these inputs are not directly interchangeable between the two models. Further, it is incorrect to assume inputs that reflect greater structure sharing than Verizon NW actually experiences in Washington, because doing so presumes that other utilities will rebuild their networks to take advantage of the assumed increase in sharing.

D. Pole Costs

Because the pole cost estimates developed by ICM are higher than those ordered in UT-980311, the Commission requires Verizon NW to adjust ICM to reflect the previously-ordered pole cost estimates, which are incompatible with ICM input requirements. The Commission justifies use of the UT-980311 pole cost estimates with a statement that they are based on publicly-available data whose derivation is well documented. The Commission's decision, however, does not account for the significant documentation in support of the pole costs used in

ICM. Those costs reflect Verizon NW's actual vendor contracts in Washington to place poles today and loading factors based on actual expenditures booked to the pole account for freight, sales tax, provisioning (*e.g.*, supplier procurement, warehousing, and handling), engineering, and minor materials (*e.g.*, anchors, down guys, cross arms, ground wires, ground plates, etc.). *See* Exhibit T-1174:32-33 (Collins); Exhibit 1171/C-1171, Binder 3, Tabs 7-9, and Binder 4, Tab 10. Verizon NW's evidence presents its accurate, most up-to-date pole cost estimates, which should be adopted.

VI. The Commission Should Defer Consideration Of A Permanent Common Cost Factor to UT-023003.

In developing its UNE recurring rates, Verizon NW used the 24.75% common cost factor adopted in the 17th Supplemental Order in UT-960369. Verizon NW presumed that in adopting this common cost factor for Verizon NW, the Commission logically set a factor that should be applied to all UNEs to assure that Verizon NW has an opportunity to recover its total estimated common costs. Otherwise, parties would be in a continuous circle attempting to show that when various common cost factors are applied to each direct cost item, the companies have the theoretical opportunity to recover their total allowed common costs. However, the Commission adopted an interim common cost factor of 19.3% for elements considered in Part B, and stated its intention to address a permanent common cost factor in Part E of this docket. Part B Order ¶¶ 378-79.

Verizon NW's Opening Brief outlined the unreasonableness of adopting different common cost factors for different rates based on different models. Verizon NW Opening Brief at ¶¶ 76-81. By deferring consideration of a permanent common cost factor to Part E, the Commission runs the unnecessary risk of repeating the continuous circle of attempting to show that when various common cost factors are applied to each direct cost item, Verizon NW has the

theoretical opportunity to recover its total allowed common costs. The Commission will develop new unbundled loop and switching rates in UT-023003 using new and updated cost models. Verizon NW submits that the Commission should establish a permanent common cost factor in that proceeding to avoid another mismatch of common and direct costs.

VII. Reciprocal Compensation

A. Tandem Switching Compensation Rate

In the Part B Order, the Commission adopts a two-pronged test for use in future proceedings to determine whether a CLEC is eligible to receive the tandem rate pursuant to 47 C.F.R. § 51.711. First, the Commission will apply a geographic area test. If the CLEC satisfies that test, then the CLEC is eligible to receive the tandem rate.[11] If the CLEC fails the geographic area test, but satisfies a functional equivalency test, then the CLEC also will be eligible to receive the tandem rate.

Verizon NW does not take issue with the first prong of the test, *i.e.*, the geographic area test. Had the Commission stopped there, its test would be consistent with the applicable FCC rule and Ninth Circuit and FCC precedent. However, the Commission gives CLECs another chance to obtain the tandem rate by applying a functional equivalency test even when the CLEC does not satisfy the geographic area test. This conflicts with the plain language of the applicable FCC rule and Ninth Circuit and FCC precedent.

In *U.S.West Communications v. Washington Utilities and Transportation Commission*, 255 F.3d 990 (9th Cir. 2001), the Ninth Circuit reversed this Commission's decision that AT&T was not eligible to receive the tandem rate, even though it satisfied the geographic area test. In

[11] Verizon NW does not address the Commission's decision regarding the appropriate two-tiered rate structure to be applied once it has been determined that a CLEC is eligible to receive to the tandem rate.

the arbitration that was the subject of that case, this Commission required AT&T to pass both the geographic area and functional equivalency tests. The Ninth Circuit reversed (after the district court affirmed), holding that the geographic area test was dispositive of the question whether the CLEC was eligible for the tandem rate. *See U.S.West Communications v. Washington Utilities and Transportation Commission*, 255 F.3d at 996-997. The Ninth Circuit relied on, among other things, the FCC's interpretation of its own rule in the *Local Competition Order* and a recent FCC letter, in which the FCC sought to clarify confusion as to the appropriate test:

> With respect to when a carrier is entitled to the tandem interconnection rate, the Commission stated that section 51.711(a)(3) of its rules requires only that the comparable geographic area test be met before a carrier is entitled to the tandem interconnection rate for local call termination. It noted that although there has been some confusion stemming from additional language in the text of the Local Competition Order regarding functional equivalency, section 51.711(a)(3) requires only a geographic area test. Therefore, a carrier demonstrating that its switch serves "a geographic area comparable to that served by the incumbent LEC's tandem switch" is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.

Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau of the FCC, and Dorothy T. Attwood, Chief, Common Carrier Bureau of the FCC, to Charles McKee, Senior Attorney, Sprint PCS (May 9, 2001) (internal citations omitted). In light of the plain language of the applicable rule and the clear precedent interpreting that rule, all of which the Commission cited in the Part B Order but failed to follow, the Commission should reconsider the tandem rate test set out in the Part B Order and require CLECs to satisfy the geographic area test in order to be eligible for the tandem rate.

B. Request for Clarification

Verizon NW seeks clarification of certain statements by the Commission regarding the rate offering and "mirroring" requirement of the FCC's *Order on Remand*.[12] At several points in the reciprocal compensation section of the Part B Order, the Commission appears to paraphrase assertions by the Joint CLECs to the effect that "the issue of the appropriate rate structure [for reciprocal compensation] should be moot, based on statements made by Qwest and Verizon that they agree to terminate all local traffic at the rates established by the FCC's interim compensation regime."[13] There is no merit to the Joint CLECs' suggestion that Verizon must receive the FCC's interim rate for all traffic (Internet-bound and § 251(b)(5)) even if the CLEC rejects Verizon's offer to mirror rates. Verizon therefore requests that the Commission make absolutely clear that these parts of its Order simply repeat arguments made by the Joint CLECs.

In the *Order on Remand*, the FCC declared that before ILECs such as Verizon NW may implement the interim rates for Internet-bound traffic they first must "offer" to "exchange" *all* traffic—Internet-bound and § 251(b)(5)—at the FCC's lower interim rates for Internet-bound traffic. This is known as the FCC's rate offer and "mirroring" requirement. Thus, Verizon NW is required only to "offer" to "exchange" all traffic at the FCC's interim rates for Internet-bound traffic as a precondition to implementing the interim rate regime. Each Washington carrier is then free to accept or reject Verizon NW's offer. Verizon NW has long since made this "offer" to all Washington carriers.[14]

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[12] Order on Remand and Report and Order, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, FCC 01-131, ¶ 89 (rel. April 27, 2001) ("*Order on Remand*").

[13] Part B Order ¶ 84. *See also* Part B Order ¶ 76. A possible source for this statement is the Joint CLECs' Reply Brief at paragraphs 12 and 14. In those paragraphs, the Joint CLECs state, without citation, that Verizon NW and Qwest intend to or have offered to exchange both local and Internet traffic at the FCC's interim rates.

[14] *See* Letter to CLECs dated May 21, 2001, a copy of which is attached hereto as Exhibit A.

Under the *Order on Remand*, if a CLEC accepts Verizon NW's "offer" to "mirror" rates, then both the CLEC and Verizon NW will *pay **and** receive* the FCC's interim rates for *all* traffic—§ 251(b)(5) traffic, as well as for Internet-bound. But if a CLEC decides not to accept Verizon NW's "offer" to "mirror" rates, Verizon NW and that CLEC will both *pay **and** receive* the contractual reciprocal compensation rate[15] for § 251(b)(5) traffic (*i.e.*, presumptively, traffic below the 3:1 ratio), but *pay **and** receive* the FCC's lower interim rates for Internet-bound traffic (*i.e.*, presumptively, traffic in excess of the 3:1 ratio).

The vast majority of Washington CLECs have not accepted Verizon's offer to mirror the FCC's interim rates because they receive far more traffic than they originate (and therefore are net recipients of reciprocal compensation). Therefore, most Washington CLECs have elected to receive the contractual reciprocal compensation rate for presumptively 251(b)(5) traffic, and the FCC's interim rate for presumptively Internet-bound traffic. For this reason, the Joint CLECs are flat wrong in asserting that the appropriate rate structure for reciprocal compensation applicable to intrastate non-Internet-bound traffic is moot.

Whether or not a CLEC accepts Verizon NW's offer to mirror the FCC's interim rate for section 251(b)(5) traffic, the compensation rates will apply ***symmetrically***. The *Order on Remand* did not alter or amend the regulations in 47 C.F.R. § 51.711, which require "symmetrical reciprocal compensation" for traffic subject to § 251(b)(5) of the Act (*i.e.*, presumptively, traffic below the 3:1 ratio). Symmetrical rates mean that Verizon NW and a CLEC with which it is exchanging traffic both pay and receive the same rate for the same category of traffic. Indeed, the FCC expressly stated in the *Order on Remand* that it was ***not***

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[15] The FCC in the *Order on Remand* did not preempt this Commission's jurisdiction over non-Internet intrastate traffic (i.e., presumptively, § 251(b)(5) traffic).

revoking other applicable regulations: "This interim regime affects only the intercarrier *compensation* (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51." *Order on Remand* ¶ 78 n.149 (italics in original).

For these reasons, the Commission should clarify that it does not accept the Joint CLECs' erroneous assertions about the FCC's rate offer and mirroring requirement and Verizon's offer to mirror rates. Moreover, as the Commission implicitly held in the reciprocal compensation section of the Part B Order, whether or not CLECs accept Verizon NW's offer, the appropriate rate structure for non-Internet-bound intrastate traffic remains within the jurisdiction of this Commission and is not moot.

VIII. Conclusion

Verizon NW asks for reconsideration and clarification of the Commission's Part B Order as set forth herein.

Respectfully submitted,

Verizon Northwest Inc.

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